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not actually used can be the basis of a mechanic's lien under the statutes. See BOISOT, MECHANICS' LIENS, § 119; note to *Central Lumber Co. v. Bradock Land and Granite Co.*, 13 Ann. Cas. 11. The justice of mechanics' lien laws consists in charging the realty whose value has been enhanced by the addition of labor or materials as security for the price thereof. See *Taggard v. Buckmore*, 42 Me. 77, 81; BOISOT, MECHANICS' LIENS, § 7. Therefore, even a liberal construction of the statute should not include materials which are never used. Actual use should be required, though not necessarily physical incorporation into the structure. See 25 HARV. L. REV. 92.

**MORTGAGES — PRIORITIES — EFFECT OF LIS PENDENS ON MORTGAGE FOR FUTURE ADVANCES.** — The plaintiff gave A. notes to collect and invest the proceeds in land in the plaintiff's name. A. took title in his own name and executed a mortgage to secure future advances to the defendants, who had no knowledge of the plaintiff's right. The plaintiff sued A. for an accounting and asserted a lien on the land, and during the suit money was advanced by the defendants, still without knowledge either of the plaintiff's right or of the suit. *Held*, that the defendants' mortgage for all the sums advanced is entitled to priority over the plaintiff's lien. *Straeffer v. Rodman*, 141 S. W. 742 (Ky.).

Where a person has acquired a right in specific property, the doctrine of *lis pendens* will not invalidate any act he may do after bringing of suit in pursuance of such right or for the purpose of carrying it into effect. Thus, where an agreement to sell is made before suit, a conveyance afterward is not invalidated. *Parks v. Smoot's Admrs.*, 105 Ky. 63, 48 S. W. 146. So also a mortgagee may buy at his own sale pending a suit to establish a mechanic's lien. *Andrews v. National Foundry & Pipe Works*, 77 Fed. 774. By the weight of authority a mortgage for future advances vests a right in the mortgagee for all advances which may be made, if they are optional, unless there is actual notice of intervening encumbrances. *Ward v. Cooke*, 17 N. J. Eq. 93. And, if the advances are obligatory, actual notice will not invalidate them. *Crane v. Deming*, 7 Conn. 387. The principal case is therefore sound. As the doctrine of *lis pendens* does not apply, the mortgagees are *bonâ fide* purchasers without notice of the plaintiff's right.

**MUNICIPAL CORPORATIONS — LIABILITY FOR TORTS — DAMAGE CAUSED BY BURSTING OF SEWER OF INADEQUATE SIZE.** — A city constructed a sewer, the capacity of which was insufficient to provide for the sewage and surface water reasonably to be expected. A rainstorm caused the sewer to burst, whereby goods in the cellar of the plaintiff's warehouse were damaged. *Held*, that if the rainstorm was extraordinary, the city is not liable. *Geuder, Paeschke & Frey Co. v. City of Milwaukee*, 133 N. W. 835 (Wis.).

A city is not answerable for damage caused by insufficiency of the plan of sewerage to drain the plaintiff's premises. *Mills v. City of Brooklyn*, 32 N. Y. 489; *Robinson v. City of Everett*, 191 Mass. 587, 77 N. E. 1151. It follows that the language of the principal case is too broad in intimating that a city must use due care to provide means to carry away surface water ordinarily to be expected. A city is liable, however, when the execution of the plan of sewerage results in a "taking" of private property. Collecting water in an artificial channel with an inadequate outlet, which, it can be foreseen, will flood the plaintiff's lands, is a "taking" of his property. *Ashley v. Port Huron*, 35 Mich. 296; *Seifert v. City of Brooklyn*, 101 N. Y. 136, 4 N. E. 321. See 1 LEWIS, EMINENT DOMAIN, 3 ed., § 65. The outlet must be large enough to provide for all water reasonably to be expected, and hence the city should be liable whether the storm is ordinary or extraordinary, if it is not unprecedented. Cf. *Philadelphia, etc. R. Co. v. Davis*, 68 Md. 281, 11 Atl. 822; *Gulf,*